

BOARD OF APPEALS CASE NO. 5536

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BEFORE THE

APPLICANTS: Kelly & Geraldine McGill

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ZONING HEARING EXAMINER

REQUEST: Modification of Special Exception
approval to reconfigure the subject parcels

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OF HARFORD COUNTY

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HEARING DATE: June 14, 2006

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Kelly F. McGill, and Geraldine A. McGill, are seeking a modification of a special exception granted by Board of Appeals Case No. 5484, to permit the subject parcels to be reconfigured so that the parcel containing the existing dwelling can be sold.

The subject parcel is located at 2628 Rocks Road, Forest Hill Maryland, in the Third Election District, and is more particularly identified on Tax Map 33, Grid 3C, Parcels 424 and 26, Lots 2 and 3. The parcels contain approximately 4.9 and 26.2 acres respectively.

The Applicant, Mr. Kelly McGill appeared and testified that he and his wife, the Co-Applicant, Geraldine A. McGill, currently reside in the existing dwelling located on the 4.9 acre parcel designated as Lot 2 of the subject property. The 26.2 acre parcel, identified as Lot 3, lies to the southwest of Lot 2, and is designated on the original site plan as "other lands of Kelly F. and Geraldine A. McGill." Mr. McGill testified that he is employed by Kelly Construction Company, an excavating and demolition business located on the subject property.

The Applicants obtained a special exception in Board of Appeals Case No. 5484, to conduct said business on the property. They are now seeking a modification of Condition Number 7 of that decision, which states that the special exception granted therein is for the Applicants only and shall terminate upon the sale of either the property or the excavation business. The site plan submitted in conjunction with the original request for special exception was introduced into evidence in the present case as Applicant's Exhibit 1. That plan shows the conditions existing at the time of the original hearing. The Applicant testified that he and his wife now wish to amend that site plan in order to enable them to sell Lot 2, and the existing dwelling located thereon, to a third party.

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In connection with that request, a revised site plan (Staff Report Attachment 3) has been created to relocate the existing driveway to a distance of over 100 feet away from the dwelling on Lot 2. In addition, Landscaping would be installed on both sides of the drive to screen the house on Lot 2 from the commercial uses conducted on Lot 3. Mr. McGill indicated that the Applicants are willing to prepare and record a landscaping plan with the Department of Planning and Zoning, which would require the installation of the proposed landscaping. The large existing metal building and adjoining parking area at the entrance to Lot 3 would be removed, and replaced with a new home to be occupied by the Applicants. The existing excavation and demolition business would still be operated from the remaining metal buildings on Lot 3. According to the witness the granting of the requested modification would have no adverse impact on any adjoining properties. Because the dwelling on Lot 2 would be screened from view of the commercial uses, the only impact caused by the proposal would be to the Applicants' new home which would be closer to the existing business structures on Lot 3.

The Applicant indicated that he had read the Department of Planning and Zoning Staff Report, and had no changes or corrections to the information contained therein. He is aware of the proposed conditions set forth in that report and has no objection to any but condition number three. With regard to that condition, the Applicants would prefer that upon the sale of Lot 2, the maintenance costs of the common drive be divided between the owners of Lots 2 and 3. In response to questions by the hearing examiner, Mr. McGill indicated that the Applicants currently have a pending contract to sell Parcel A, as shown on Staff Report Attachment 3, to the adjoining property owners.

Mr. Anthony McClune Deputy Director of the Department of Planning and Zoning, appeared and testified regarding the findings of fact and recommendations made by that agency. He indicated that the Department had reviewed the Application and Attachments, and visited the site and surrounding area. The Department also prepared photographs and submitted an aerial photograph in connection with the Staff Report. The Department recommended approval of the Application in its May 8, 2006 Staff Report subject to the five conditions set forth therein.

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According to the Mr. McClune, the Applicants have requested to modify conditions number 7, set forth in Board of Appeals Case Number 5484, in order to allow them flexibility to sell Lot 2, and/or Parcel A, to third parties. The aforesaid provides that the special condition granted in that case was for the Applicants only, and would terminate upon the sale of either the property or the excavation business. According the Mr. McClune, at the original hearing, the Department asked that the Applicant consolidate Lots 2 and 3 into one parcel as a condition precedent to the granting the requested special exception. However, the Applicants instead requested that they be allowed to relocate the property line between the two parcels thereby enabling Lot 2 to meet all applicable setback requirements. In exchange for the Department's agreement with this request, the Applicants agreed to a new condition number 7 which would terminate the special exception upon the sale of either the subject property or the excavation business.

Mr. McClune testified that the granting of the requested modification would have no adverse impact on any adjacent properties. The Applicants will continue to reside on the subject property, and the existing business will not be changed in any way by the proposed modification. He also stated that the landscaping plan proposed by the Applicants will be sufficient to screen the business from view by the purchasers of the existing dwelling on Lot 2. With regard to the Applicant's request to split the maintenance costs of the common drive between the owners of Lots 2 and 3, Mr. McClune indicated that so long as the business is being conducted on Lot 3, the majority of wear and tear on the drive will be caused by the large commercial vehicles traversing that roadway. Therefore, the common drive maintenance costs should continue to be born exclusively by the owners of Lot 3. However, once the business ceases operating from Lot 3, the Department would have no objection to the common drive maintenance costs being split between the owners of Lots 2 and 3. Mr. McClune further testified that the Department had considered the provisions set forth in Section 267-9I in connection with the subject request, and determined that the proposed modification meets all criteria set forth therein. Based on the results of the Department's investigation, the proposed use, at the proposed location, would result in no adverse impact to adjacent properties. In addition, the sale of the existing dwelling on a separate lot would not create any changes to the existing business or special exception use already granted by the Board of Appeals

No testimony or evidence was presented in opposition to the requested modification.

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CONCLUSION:

The Applicants, Kelly F. McGill, and Geraldine A. McGill, are seeking a modification of a special exception granted by Board of Appeals Case Number 5484 to permit the subject parcels to be reconfigured so that the parcel containing the existing dwelling can be sold.

The Board of Appeals approved Applicants' request in Case No. 5484 for a special exception to allow commercial motor vehicle and equipment storage and construction services and suppliers use in the Agricultural District. The Board set forth seven conditions for approval in that case, including condition number 7, which states that "[t]he approval is for the Applicants only and shall terminate upon the sale of the property or excavating business." The Applicants are now seeking a modification of that condition in order to enable them to reconfigure and sell Lot 2, and the existing dwelling thereon, to a third party. They are also requesting to sell Parcel A, as shown on the revised final subdivision plat designated as Attachment 3 to the Department of Planning and Zoning Staff Report. The Applicants plan to construct a new dwelling on Lot 3, at the location of an existing metal building which is to be removed from the premises. The Applicants intend to move into the new dwelling, and to continue operation of the existing excavation and demolition business from Lot 3 of the subject property.

The Hearing Examiner finds that the requested modification is relatively minor, and that it will have no adverse impact upon adjacent properties. The proposed relocation of the common drive will place it over 100 feet away from the existing dwelling on Lot 2. Due to the topography of the property, none of the existing improvements are visible from Rocks Road with the exception of the rooftops of the existing dwelling. In addition, the Applicants have agreed to a condition requiring them to plant landscaping sufficient to screen the existing commercial uses from the dwelling on Lot 2. The sales of Lot 2 and Parcel A would have no impact on the existing business, and there would be no intensification of the current business use. Finally, the subject request raises no issues in light of the Limitations, Guides and Standards, set forth in Section 267-9I of the Harford County Code.

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Accordingly, the Hearing Examiner recommends approval of the Applicant's request, subject to the following conditions.

1. The Applicant shall plant trees along the proposed common drive to provide screening to the existing dwelling on Lot 2.
2. A landscaping plan shall be submitted to the Department of Planning and Zoning for review and approval.
3. The Applicants shall be responsible for the maintenance and repair of the common drive for so long as the existing business is operated on Lot 3 of site. Once the existing business ceases operation, the cost of maintaining the common drive shall be split between the owners of Lots 2 and 3.
4. All other conditions set forth in Board of Appeals Case No. 5484 shall remain in effect.
5. The approval is for the Applicants only and shall terminate upon the sale of Lot 3 or the sale of the excavation and demolition business currently operated onsite by the Applicants.

Date: JULY 17, 2006

REBECCA A. BRYANT
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on AUGUST 14, 2006.